of similar offence in the recent past have been insufficient to act as a deterrent.

But any tendency to standardise punishment for any type of offence is to be deprecated because it means that the individual offender is being punished not upon the facts of his particular case but because he has committed an offence of that type. *(Abdul Karim* v. *Regina*[5]*)*. The first and foremost consideration of punishment is the public interest. The object of punishing crime is not only to punish the offender but also to deter others. Public interest is best served if the offender is induced to turn from criminal ways to honest living. Our law does not therefore fix the sentence for a particular crime but fixes a maximum sentence and leaves it to the Court to decide what is the appropriate sentence in the particular circumstances of each case. It is for these reasons that evidence of antecedents and character should be taken before sentence in respect of each convicted person. *(Abu Bakar bin Alif* v. *R., supra)*.

Where an accused person pleads guilty, the prosecution in outlining the facts of the case in order to assist the Court in assessing the sentence, should not allege anything against the accused which cannot be substantiated. Statements of opinion or suspicion should be omitted and only matters of known facts or of argument arising out of proved facts should be given. *(Yap Tan Lim* v. *R.*[6] and *Chua Ah Gan (f)* v. *Public Prosecutor*[7]*)*.

Archbold (33rd Edn. at p. 218), after stating that as an aid to determining the appropriate punishment the Court will, after verdict, hear evidence for the prosecution or the accused, either *viva voce* or by affidavit, goes on to say:—

". . . in all trials after conviction there should be given accurate information as to the general character and other material circumstances of the prisoner even though such information was not available in the form of evidence proper, and that such information when given could rightly be taken into consideration by the Judge in determining the quantum of punishment unless it was challenged and contradicted by or on behalf of the prisoner, in which case the Judge should either direct proper proof to be given or should ignore the information. It is important that there should be precision and accuracy in any such information. A police officer called after conviction to give evidence of the character and antecedents of the prisoner should, in general, confine his evidence to the previous convictions (if any) and antecedents of the prisoner, including evidence of the prisoner's home and upbringing if the prisoner's age makes this information material. He should also inform the Court of any matters which he believes are not disputed by the prisoner and ought to be known to the Court. He should, further, inform the Court of anything known in the prisoner's favour, such as periods of employment and good conduct. Counsel for the prosecution should see that a police witness giving evidence after conviction is kept in hand and is not allowed to make allegations which are incapable of proof and which he has reason to think will be denied by the prisoner. The Judge has a right to inquire into any matter on which he thinks it right to ask for information".

I think that if Magistrates will bear the above observations in mind when called upon to assess sentence they will find their task much simplified.

Order accordingly.

Solicitors: *C. P. S. Wong & Co.*

LIM GAIS KHEE v. REG.

[A. Cr. J. (Buttrose J.) August 25, 1959]

[Singapore — Magistrate's Appeal No. 99 of 1959]

Penal Code s.304A — Negligence — Particulars of negligence — Charge containing insufficient particulars.

Criminal Law and Procedure — Charge — Framing — Alternative versions of accident — Criminal Procedure Code (Cap. 132), s.172(f).

The appellant was charged with causing death by negligence under section 304A of the Penal Code. At the commencement of the hearing in the District Court his counsel applied for particulars of the negligence alleged, but it was refused on the authority of *Public Prosecutor* v. *Chang Wan Seng*[1], a Federation case, where it was held that an accused person was not entitled to particulars of negligence under section 304A of the Penal Code because it was tantamount to a request for particulars of the evidence which the prosecution proposed to call.

Held: (1) the charge in this case did not contain sufficient particulars of the negligence alleged to enable the appellant to know the case he had to meet. Merely to tell the appellant in this case that he was charged with doing a negligent act negligently was insufficient and on that ground alone the appeal must succeed;

(2) at the close of the case for the prosecution a number of versions as to how the accident occurred were disclosed and it was incumbent on the Court in the light of the provisions of section 172(f) of the Criminal Procedure Code (Cap. 132) to make up its mind as to which, if any, of the possible but incompatible versions of the facts had been proved. It is not enough that the learned District Judge in his grounds of decision should in effect have done so. The appellant at the conclusion of the prosecution case was entitled to know which of the several alternative versions of the accident the Court found to be satisfactorily established and which constituted negligence. If it found itself unable to decide which account of the accident was the true one then the prosecution had failed to make out their case and the appellant should not have been called on for his defence. The learned District Judge should have come to a decision regarding the facts before calling upon the defence.

Public Prosecutor v. *Chang Wan Seng*[1] dissented from.

Observations on framing charge and duty of Court to satisfy itself thereon.

Cases referred to:—

(1) *Public Prosecutor* v. *Chang Wan Seng* [1954] M.L.J. 186.

(2) *Public Prosecutor* v. *Lee Pak* [1937] M.L.J. 265.

MAGISTRATE'S APPEAL.

H. E. Cashin for the appellant.

G. Tara Singh (Crown Counsel) for the respondent.

Buttrose J.: This was an appeal from a District Court which convicted the appellant of causing death by negligence under section 304A of the Penal Code. At the conclusion of the hearing, I allowed the appeal and quashed the conviction and sentence but because it raised important points I intimated I would give my reasons in writing later.

The appellant was charged in the Third Criminal District Court as follows:—

"You are charged that you on or about the 17th day of January, 1959, at about 4.35 p.m. at Jurong Road, 8½ m.s. caused the death of one Ang Kwee Eah, M/31, by doing a negligent act not amounting to Culpable Homicide namely by driving motor bus SH 176 in a negligent manner and that you have thereby committed an offence punishable under section 304A of the Penal Code."

At the commencement of the hearing in the District Court Counsel for the appellant applied for particulars of the negligence alleged.

The application was refused by the learned District Judge on the authority of *Public Prosecutor* v. *Chang Wan Seng*[1] where Wilson J. held that an accused person was not entitled to particulars of negligence under section 304A because it was tantamount to a request for particulars of the evidence which the prosecution proposed to call.

The trial thereupon proceeded. The undisputed fact was that a motor bus driven by the appellant was involved in a collision with a motor lorry at the 8½ m.s. Jurong Road as a result of which the driver of the motor lorry was killed.

The eye-witness evidence for the prosecution as to the accident was supplied by passengers in the appellant's motor bus.

At the close of the case for the prosecution a number of versions as to how the accident occurred were disclosed. After carefully examining the evidence I was unable to arrive at any conclusion as to how the accident happened.

One witness said the motor lorry was stationary at the time of the collision while others said it was in motion and travelling along the road.

Another witness said that prior to the accident the bus swerved to the right on to its wrong side before it crossed the bridge while others maintained it only swerved to the right after it crossed the bridge. There were different versions as to the behaviour of the bus on the road prior to the accident and also as to its speed.

Notwithstanding this the learned District Judge called on the appellant for his defence and subsequently convicted him.

I shall deal firstly with the charge which in my view did not contain sufficient particulars to enable the defendant to know the case he had to meet.

The charge as framed was nothing more in effect than an allegation that the appellant did a negligent act in a negligent manner.

It is true that the charge followed the form set out in Ratanlal's Law of Crimes 19th Ed. 785 but these forms are only meant to serve as a general guide and bear no relation to any particular set of facts. Again it is not sufficient, as a general rule, merely to copy out the words of the section. The charge must be so framed as to enable the appellant to know with precision and in detail the case against him which he has to meet. It must have particular reference and be adapted to the facts of each particular case. An accused person must not be left in a state of doubt as to the allegations against him or as to which of several alternatives he is alleged to have been guilty of.

It is the duty of the Court to satisfy itself that the charge is on the face of it properly framed before an accused person is called upon to plead to it. Merely to tell the appellant in this case that he was charged with doing a negligent act negligently is in my opinion insufficient. On that ground alone in my opinion this appeal must succeed.

Similar views were expressed by Whitley Ag. C.J. in *Public Prosecutor* v. *Lee Pak*[2] with which I respectfully agree. That case was not cited to the Court in *Chang Wan Seng's*[1] case to which I have referred and from which I find myself compelled to dissent or to the learned District Judge who tried the appellant. If it had been it is conceivable, I think, that they might have come to a different conclusion.

With regard to the differing accounts of the accident given by the prosecution witnesses it was, in my view, incumbent on the Court in the light of the provisions of section 172(f) of the Criminal Procedure Code at the close of the case for the prosecution to make up its mind as to which, if any, of the possible but incompatible versions of the facts had been proved.

It is not enough that the learned District Judge in his grounds of decision should in effect have done so.

The appellant at the conclusion of the prosecution case was entitled to know which of the several alternative versions of the accident the Court found to be satisfactorily established and which constituted negligence.

If it found itself unable to decide which account of the accident was the true one then the prosecution had failed to make out their case and the appellant should not have been called on for his defence. The learned District Judge should have come to a decision regarding the facts before calling upon the defence.

For these reasons I allowed the appeal and quashed the conviction and sentence.

Appeal allowed.

Solicitors: *Rodyk & Davidson.*

HONG TECK GUAN & ANOR. v. LAM SOON CANNERY LTD.

[C. A. (Tan Ah Tah, Buttrose and Wee Chong Jin JJ.) January 16, 1959]

[Singapore — Civil Appeal No. 15 of 1959]

Mercantile Law — Account stated — Statement of account — Letter referring to statement of account confirming and agreeing thereto — Letter written by clerk on express instructions — Repudiation.

Practice and Procedure — Claim — Sum claimed in writ — When not binding on claimant.

Practice and Procedure — Translation — Principles of making.